

Editor's note: Appeal - aff'd, Civ.No. N-89-234- BRT (D.Nev. Sept. 14, 1989), appeal filed, No. 89-16407, (9th Cir. Nov. 8, 1989), aff'd, Nov. 1, 1991, 947 F.2d 1409

REED GILMORE (ON RECONSIDERATION)

IBLA 88-53

Decided January 26, 1989

Reconsideration of an order dated April 14, 1988, affirming a decision of the Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer N 46844.

Order vacated; decision appealed from affirmed.

1. Oil and Gas Leases: Offers to Lease

BLM properly rejects a telecopy of a lease offer because it does not bear a personal handwritten signature as required by 43 CFR 3112.6-1(a) and 3102.4.

APPEARANCES: Laura Lindley, Esq., Denver, Colorado, for appellant; Lynn M. Cox, Esq., Office of the Solicitor, Pacific Southwest Region, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

By order dated June 2, 1988, we granted reconsideration of, and stayed the effect of, our order dated April 14, 1988, affirming an August 26, 1987, decision by the Nevada State Office, Bureau of Land Management (BLM).

Appellant filed a simultaneous oil and gas lease application for parcel NV-148 during the June 1987 filing period and was selected in the random drawing for the parcel. BLM's August 26 decision, entitled "Execution of Oil and Gas Lease Form(s) Required," stated in part:

Enclosed is the original and two copies of Form No. 3100-11, "Offer to Lease and Lease for Oil and Gas" for your execution. The applicant (or the applicant's attorney-in-fact, as provided by 43 CFR 3112.6-1(a) and (b)), must manually sign and date each copy on the reverse side of the form. [1/]

1/ 43 CFR 3112.6-1(a) provides:

"| 3112.6-1 Lease offer and payment of the first year's rental.

"(a) The lease agreement, consisting of a lease form approved by the Director, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the selected applicant, if qualified, for signing. Only the personal handwritten signature, in ink, of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, shall be accepted. The signed lease agreement shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease."

All copies of the lease form must be properly executed and filed in this office within thirty (30) days from your receipt of this decision, which constitutes a compliance period. Failure to do so will result in the rejection of your offer without further notice.

Appellant received BLM's decision on August 29, 1987. The forms were therefore due to be filed no later than September 28, 1987.

Appellant sent the signed lease forms to BLM from Kimball, Nebraska, on September 21, 1987, by certified mail. On September 28, 1987, appellant's secretary telephoned BLM and learned that the forms had not been received. Appellant then telecopied (telexed) a copy of the lease he had executed to an attorney in Reno, Nevada, who hand-delivered it to the BLM office the same morning. That afternoon BLM received a telecopied letter from appellant's attorney explaining the situation. ^{2/} The lease forms which had been mailed were received by BLM at 9 a.m. the next morning.

Having confirmed that the lease offer would be rejected without further notice, as stated in BLM's decision, appellant filed a notice of appeal. Appellant began his statement of reasons in support of the appeal by noting he could not be sure of the rationale for rejecting his lease offer because BLM had issued no decision stating what it was. He argued that the telefaxed copy of the signed lease offer filed on September 28 complied with the requirements of 43 CFR 3112.6-1(a) because the signature was as permanent as one in ink and because the regulation does not prohibit filing telecopied documents. He argued that the purposes of the regulation were served in this case because there had been no manipulation of the application process by a filing service, conduct of Government business had not been delayed, and he had personally participated in the filing process. Because the purposes of the regulation were satisfied, he argued, BLM's rejection of the offer because the signature was not in ink was inconsistent with the principle of Conway v. Watt, 717 F.2d 512 (10th Cir. 1982), that an offer cannot be rejected for a de minimis, nonsubstantive error. He pointed out that in Jack Williams, 91 IBLA 335, 93 I.D. 186 (1986), the Board had reversed, on the basis of Conway, the rejection of an offer signed in pencil. Finally, appellant distinguished the Board's decisions in David A. Gitlitz, 95 IBLA 221 (1987), and similar cases on the grounds that in those cases the rejections occurred because BLM had not received the offer within 30 days, as it did in this case. BLM did not file an answer.

^{2/} The letter stated:

"In accordance with 43 C.F.R. | 3112.6-1, Mr. Gilmore signed the lease offer and stipulations and returned them to your office by certified mail over a week ago. However, it is our understanding that your office has not yet received the signed lease documents. Therefore, Mr. Gilmore has today telecopie[d] the signed lease documents to Mr. Robert E. McCarthy, who will deliver them to your office. The advance rental was, as you know, filed with the lease application. Mr. Gilmore's office is attempting to trace through the Postal Service the location of the documents which should have been received by your office by now."

Our April 14, 1988, order affirming BLM's decision did not address these arguments. Rather, it stated:

The BLM decision required that all three copies be signed and dated and returned within the time specified. BLM needs one copy each for the State Office, the lessee, and the surface managing agency. Vicki D. Graham, 102 IBLA 38, 40-41 (1988). Gitlitz, supra at 223, explains that the requirement to file lease offer forms in the proper BLM office within thirty days of receiving a decision requiring that action is not a non-substantive matter because it is reasonably necessary to the expeditious conduct of BLM's business. Similarly, BLM may require a reasonable number of copies of the lease offer form be filed for its administrative convenience within the time specified. Vicki D. Graham, supra; see Bill Mathis, 90 IBLA 353 (1986); F. Peter Zoch, 60 IBLA 150 (1981). Failure to file the required forms within the time specified requires rejection of the offer. 43 CFR 3112.5-1(c).

In his request for reconsideration appellant states that because there was not a written decision rejecting his offer, he "was compelled to speculate as to the reason for the rejection." He also states that he "presumed that [his] lease offer was unacceptable because it was filed by facsimile; the Board's Order indicates that the facsimile signature is of no concern but that the offer was unacceptable because only one and not three copies had been filed by the close of the 30-day compliance period" (Petition at 2.) 3/

Appellant observes that the discussion in Vicki D. Graham relied upon in our order to reject his lease offer was dictum and was disputed in the concurring opinion and that the issue of whether filing less than three copies justifies rejection of a lease offer has not otherwise been addressed by the Board under the current regulations (Petition at 3). Appellant argues that rejection of his lease for filing less than three copies is not authorized by the regulations. Appellant also argues that BLM should be estopped from rejecting his lease offer.

BLM's answer states that it "considers appellant's failure to submit a properly executed, manually signed lease form in compliance with 43 C.F.R.

3/ Appellant also requested reconsideration on the grounds that his appeal was not suitable for summary disposition by a two-Judge panel because the issue on which it was decided was not governed by well-settled precedent, having been addressed only in Vicki D. Graham, supra. Although for several years the Board reviewed all cases and issued decisions by three-Judge panels, currently, as permitted by 43 CFR 4.2(a), two Judges review a case and issue a decision. If there is disagreement between them, a third panel member is named. In addition, appeals governed by well-settled precedent are ordinarily, ruled upon by an unpublished order signed by two Judges rather than decision.

|| 3112.6-1(a) and 3102.4 as the fatal omission which mandated rejection of the offer" (Answer at 3). BLM adds:

In his petition for reconsideration, appellant suggests that the Board views his failure to submit a personally signed lease form as inconsequential. See Petition for Reconsideration at page 2. While the Board chose not to address this issue directly in its original order, it merits full review at this time. Appellant's failure to submit even one manually signed lease form, quite apart from his failure to submit the required number of copies, constituted a direct substantive violation of the regulations. Both of appellant's omissions provide sufficient, independent bases for the Bureau's rejection decision.

(Answer at 4). 4/

To this appellant replies that although 43 CFR 3112.6-1(a) requires "the personal handwritten signature" of the offeror, "[t]he issue in this appeal is not that his offer lacks a personal, handwritten signature but that the offer, containing the personal, handwritten signature of Reed Gilmore, was transmitted by telecopy" (Reply at 1). Appellant iterates that no regulation forbids filing a telecopied offer.

There are several related regulations involved. 5/ As indicated above, 43 CFR 3112.6-1(a) provides that the lease agreement is to be forwarded to the applicant for signing, and only the personal handwritten signature, in ink, shall be accepted. Under this regulation, the signed lease agreement that constitutes the applicant's offer to lease must be filed with the proper BLM office within 30 days of its receipt. 43 CFR 3102.4 provides that "[a]ll applications [and] the original of offers * * * shall be holographically (manually) signed in ink" by the potential lessee, and adds: "Machine or rubber stamped signatures shall not be used." 43 CFR 3112.5-1(c) provides that "[t]he application of the selected applicant shall be rejected if an offer is not filed in accordance with 3112.6-1 of this title," and 43 CFR 3112.5-2(a), in turn, provides that "[a]n offer shall be rejected if the application upon which it is based should have been properly rejected under" section 3112.5-1.

4/ "Thus[,] while the Board's April 14th order is correct as a matter of law, the Bureau believes appellant's specific failure to return any properly executed lease forms within the 30 day compliance period more accurately states the basis for it's [sic] rejection decision. And that issue, as recognized by the Board in its April 14th order, has been well settled in the Bureau's favor by a long line of Board decisions." (Answer at 14, emphasis in original).

5/ We discuss the regulations in the present tense because they were in effect when the events in this case took place. However, 43 CFR Subpart 3112 was removed from the regulations as part of the revisions made to adjust for changes in the simultaneous oil and gas leasing system made by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330. 53 FR 22814, 22843 (June 17, 1988). 43 CFR 3102.4 has also been revised. 53 FR 17353 (May 16, 1988).

The reason the regulations were adopted in these terms in 1980 was to remedy abuses of the simultaneous oil and gas leasing system by filing services. See 44 FR 56176 (Sept. 28, 1979). That system was described in the notice of proposed rulemaking as follows:

Most filing services file their client's [sic] drawing entry cards directly with the Bureau of Land Management and use the service's address on the cards instead of the applicant's personal address. Typically, filing services rubberstamp the client's signature on the card or have the client send the cards to the filing service pre-signed.

The drawing entry card is the applicant's offer to lease. Leases are issued in the name of the drawing winner upon submittal of the first year's rental within 15 days after notification. The applicant is not required to sign the lease form.

44 FR 56176 (Sept. 28, 1979). The changes in the rules that were designed to address the abuses were summarized:

The lease form would replace the drawing entry card as the lease offer. The applicant would be required to personally sign the lease form.

Only two types of filing would be proper, those signed and fully completed by the applicant and those signed and fully completed by an agent on the applicant's behalf.

Only handwritten signatures would be proper on drawing entry cards.

Id.

The Department's reasons for requiring personal handwritten signatures on documents were fully set forth in response to the comments on the proposed rules:

Some comments suggested that the requirement in the proposed rulemaking that qualification statements, applications and offers be "manually signed" did not exclude the use of rubber stamped signatures. In order to make it clear that only personal, handwritten signatures will be permissible, language has been added to the final rulemaking requiring "holographically (manually) signed" statements, applications and offers.

As one comment pointed out, this change will overturn the rule established by the Interior Board of Land Appeals (IBLA) in Mary I. Arata, 4 IBLA 201 (1971). The IBLA held that existing regulations were drafted in such broad terms as to allow mechanically affixed signatures. The outgrowth of this decision has

been that other Bureau of Land Management regulations have been interpreted to allow other than holographic signatures. In interpreting one such regulation, IBLA recognized that by following its decision in Arata it exposed the Department of the Interior "to another method by which the reasonable efforts of the Department to ensure fair play and compliance with the law can be made more difficult." However, under the language of then existing regulations, IBLA felt constrained to follow its earlier decision while deploring "the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulation[s] without any discern[i]ble regard for their spirit and intent". W.H. Gilmore, 41 IBLA 25 (1979) [at 29]. The final rulemaking is intended to overturn the Arata rule.

Personal signatures help to eliminate fraud against the United States and those who participate in the leasing system through agents. In may [sic] cases, those who participate through agents have limited exposure to materials issued by the Department of the Interior concerning the leasing program. In view of these factors, and in order to impress on the applicant the seriousness of the leasing procedures and the statements the applicant is required to certify, it is appropriate to require a holographic signature.

45 FR 35157 (May 23, 1980).

[1] In this case the signature space on the document that was filed on time contains what appears to be a handwritten signature, although it is clearly a copy of the original signature transmitted in sending the document. There is no dispute as to whether the signature appearing on the original of the lease offer was written by the appellant. Nor is there any allegation or suggestion of fraud. Thus, judged from the original of the lease offer, it is clear that appellant was personally involved in the leasing process and that the purposes of the signature requirement were met.

However, it is not the original of the lease offer that was filed on time. Rather, we are concerned with the telecopied lease offer received by BLM on September 28, 1987. There is no doubt that the signature appearing on the telecopied lease offer is not the personal, handwritten signature called for by 43 CFR 3112.6-1(a) and 3102.4. It is a copy of the signature which appeared on the document fed into the telecopy machine. Although we recognize telecopying has become a common means for transmitting documents, both in the private and in the public sector, we hold that the applicable regulations require the potential lessee to file the document he received from BLM and therefore do not permit the substitution of a telecopied document. The language of the regulations in 43 CFR 3112.6-1 is clear that BLM is to forward the lease agreement, consisting of a lease form approved by the Director and any necessary stipulations, to the applicant for signing, that only the applicant's personal, handwritten signature (or that of his or her attorney-in-fact) may be accepted, and that the applicant must file the

signed lease agreement in the proper BLM office within 30 days from receiving it. Return of the lease form and stipulations that were sent is necessary to determine that the personal, handwritten signature required by both 43 CFR 3112.6-1(a) and 3102.4 is on the documents. That determination is necessary to assure that the potential lessee is personally involved and aware of the terms of the lease, and it cannot be made from a telecopy. Accordingly, we conclude that the signature appearing on the offer received by BLM did not conform to the regulations.

In William Reppy (On Reconsideration), 91 IBLA 191, 193 (1986), we identified three conditions a rule must meet in order for it to be considered a substantive rule whose violation justifies per se rejection of an application or offer: (1) the rule must notify lease applicants of the applicable requirement; (2) the rule must be consistently applied; and (3) the rule must further a statutory purpose. See Brick v. Andrus, 628 F.2d 213, 216 (D.C. Cir. 1980); Conway v. Watt, *supra*; KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985).

Appellant argues that this case should be regarded as analogous to Jack Williams, 91 IBLA 335, 93 I.D. 186 (1986), in which we reversed a BLM decision that had rejected appellant's oil and gas lease application because it was signed in pencil rather than ink on the grounds it was not a substantive error. The Board concluded:

[A]ppellant did not omit any required information from his application, including his signature. Rather, appellant failed to comply with 43 CFR 3102.4 by not completing his application in the proper manner. The signature was nevertheless valid. As the court noted in Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117, 128 n.16 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir. 1951), cert. denied, 342 U.S. 820 (1951), a signature includes the name of an individual impressed on a document by any known means with the intention of executing that document. See also Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954). Thus, it is immaterial to the validity of appellant's signature that it is in pencil, rather than in ink. It appears that the holographic signature of applicant in this case has fulfilled the regulatory objective of ensuring the personal participation of applicant in the filing process in order to reduce the opportunity for fraud * * *. [Emphasis in original.]

91 IBLA at 341, 93 I.D. at 190. Although we specifically noted in Williams that we were not ruling on the question of whether a pencil signature on an oil and gas lease offer would constitute a nonsubstantive error (id. at 343 n.3), clearly our reasoning could apply to an offer signed in pencil. The regulation addressed in reviewing Williams' application, 43 CFR 3102.4, also applies to oil and gas lease offers and is similar to 43 CFR 3112.6-1(a). While a pencil signature would not meet the requirement that a signature be in ink, the signature would, nevertheless, be legally binding. Appellant errs, however, in regarding the present case as differing from Williams

merely in the manner in which the signature was made. Rather, the difference is that the signature appearing on appellant's offer, unlike the pencil signature in Williams, is not the appellant's personal, handwritten signature. In other words, unlike Williams, the problem is not that appellant signed his offer using a pencil rather than a pen but that he did not sign the offer BLM received. This difference is fatal to appellant's case.

When the Board first addressed the issue of offers rejected by BLM for improper signatures in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), it reversed the rejection for two reasons. First, the signature at issue had been applied by use of a rubber stamp and the Board found that the law was clear that a such a signature could be valid if intended as the offeror's signature. Second, the Board concluded that the words "signed and fully executed" in the then-current regulation were ambiguous. Under this ruling, however, because the validity of the signature depended upon the person's intent, in some cases BLM found it necessary to obtain evidence of the intent in order to assure itself that the signature was valid so as to be sure the offer qualified. See, e.g., Robert C. Leary, 27 IBLA 296 (1976). As a result, BLM and this Board were required to consider substitute signatures made in a variety of circumstances, and, as usual, the result was a number of complex rules to address the variety of circumstances and the relation of the rules to other aspects of the leasing system. ^{6/}

BLM solved the problem and eliminated the complexity. It changed the regulation to state: "Only the personal hand-written signature of the prospective lessee * * * shall be accepted." 45 FR 35156, 35164 (May 23, 1980). The change was made for the express purpose of eliminating the rule established by the Board in its first Mary I. Arata decision. Id. at 35157. The change achieved its intended result. See Mary I. Arata, 66 IBLA 160 (1982). The regulation is clear and has been consistently applied. Only the personal, handwritten signature of the offeror will suffice. Fred E. Forster III, 65 IBLA 38 (1982); Betty J. Thomas, 56 IBLA 323 (1981); Mary I. Arata, *supra*. Only a personal handwritten signature meets both the language of the regulation and its purpose of helping to assure that the offeror was personally involved.

Appellant argues that he was personally involved and that BLM knew it. He does so based on an assertion that the cover document to the telecopied lease offer and the letter from his attorney, as well as an affidavit accompanying his statement of reasons, show his intent that the copy of the signature on the document serve as his signature. One reason BLM revised the regulation, however, was to eliminate the need to consider such additional documentation by eliminating the need to determine the offeror's

^{6/} See, e.g., W. H. Gilmore, 41 IBLA 25 (1979) (facsimile signatures on statements filed with BLM); Rebecca J. Waters, 28 IBLA 381 (1977), (signature made by son); Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976) (rubber stamp applied by secretary); William J. Sparks, 27 IBLA 330, 83 I.D. 538 (1976) (mechanically imprinted signature made by agent).

intent and thereby the extent of his participation. This need arose due to the Board's conclusions in its first Mary I. Arata decision. For us now to consider the documentation, or find that BLM should have considered it, would be contrary to not only the reason BLM revised the regulation but the language of the regulation itself. While appellant's telecopied lease offer does appear to be a copy of the signed offer received the next day, nothing in the appearance of a telecopied submission (or for that matter a photocopy of a signed offer) guarantees that this is the case. We can compare the two only because the mailed lease offer was received the next day. If the tele-copied offer had been the only offer filed, no review would be possible. In such case the only proper application of the regulation would be to find that the offer did not bear the personal handwritten signature of the offeror. So also here.

We conclude that appellant's failure to submit the signed lease offer and stipulations within 30 days was a violation of a substantive rule that justified per se rejection of the offer.

Finally we address appellant's estoppel argument. As noted by appellant, the Board reviews claims of estoppel by applying the elements identified in United States v. Georgia Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970):

Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

See Terra Resources, Inc., 107 IBLA 10 (1989).

In support of his estoppel argument appellant has supplied the affidavit of Debra S. Bohac, his employee and the person who transmitted the telecopied lease offer. BLM's response to appellant's argument is supported by the affidavits of Joan N. Woodin, Supervisory Minerals Land Law Examiner for the BLM Nevada State Office, and Bernita Dawson, a land law examiner in the same office.

The arguments of the parties concern two matters. First, appellant argues that the context of a telephone conversation between Bohac and Woodin requires a conclusion that his employee was told that BLM would accept the offer if it was mailed timely. BLM denies that such a statement was made or could be inferred from the context of the conversation.

We need not decide the facts about the conversation. Even assuming that we were to find, based on Bohac's affidavit, that the first two elements of estoppel were met, appellant could not have been ignorant of the "true facts." The regulations require that an offer be filed within 30 days of receipt. Parties dealing with the Government are chargeable with knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). The Board has consistently held that late

receipt requires rejection of the offer and has explicitly rejected arguments that offers are filed when transmitted. See Santa Fe Energy Co., 102 IBLA 393 (1988), and cases cited therein. Board decisions are published and indexed and available to the public. See 5 U.S.C. § 552(a)(2) (1982). Appellant knew that the law required his lease offer to be returned to BLM within 30 days and could not have justifiably relied on any possible mis- statement by Woodin. As a matter of fact, appellant did not rely on the telephone conversation but proceeded to telecopy his lease offer.

The second matter concerns whether BLM led appellant to believe that it would accept the telecopied lease offer. As with the first claim, we need not decide the facts pertaining to the telephone conversation. Bohac's affidavit merely states: "I asked Ms. Dawson if they (BLM) would consider the telecopied signed lease form for acceptance as the signed lease offer and she told me they would." Assuming the statement is true, the only commitment made by BLM was to consider whether the telecopied lease offer constituted a proper lease offer. If this commitment was made, BLM should have considered the issue and issued a decision. Any failure by BLM to observe its commitment, however, provides no basis to estop BLM from rejecting the telecopied lease offer and the failure, if any, has been remedied by the Board's consideration of the issue.

In view of our holdings on the issues discussed above, we vacate our April 14, 1988, order and affirm the August 26, 1987, BLM decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge